

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge		Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 2785	DATE	3/12/2002
CASE TITLE	Vardon Golf Company vs. Karsten Mfg. Corp.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] For the reasons stated in the attached Memorandum Opinion and Order, Karsten's motion for reconsideration of this court's September 7, 2001 summary judgement determination with respect to U.S. Patent 5,401,021 is granted in part and denied in part. [Doc. #152]
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials vg(lc)	Date/time received in central Clerk's Office	8 number of notices	Document Number 174
			MAR 14 2002 date docketed	
			<i>[Signature]</i> docketing deputy initials	
			3-13-02 date mailed notice	
			<i>[Signature]</i> mailing deputy initials	

3,4,5, and 12 (as to both literal infringement and infringement under the doctrine of equivalents) and Claims 7 and 8 (as to literal infringement). As a result of this court's holding, only allegations of infringement under the doctrine of equivalents of Claims 7,8,14, and 15, and of literal infringement of Claims 14 and 15 of the '021 Patent remain in the case.

On November 29, 2000, and therefore subsequent to this court's ruling, the Federal Circuit issued a decision Festo Corp. v. Skoketsu Kinzoku Kogyo Kabushiki Co., 234 F.3d 558 (Fed. Cir. 2000). Karsten submits its present motion to reconsider under the auspices of the Federal Circuit's decision in Festo.

Standard of Review

Motions for reconsideration serve a "limited function: to correct manifest errors of law or fact or to present newly discovered evidence." Keene Corp. v. International Fidelity Ins. Co., 561 F.Supp. 656, 665-66 (N.D.Ill.1982), aff'd 736 F.2d 388 (7th Cir.1988). Accordingly, a court will entertain a motion for reconsideration only where "the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." Bank of Waunakee v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir.1990) (quoting Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D.Va.1983)).

A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court. Such problems rarely arise and the motion to reconsider should be equally rare. Bank of Waunakee v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir.1990), citing Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D.Va.1983). A motion for reconsideration may not be used to introduce

new evidence that could have been adduced during the pendency of the summary judgment motion or as an opportunity to present new legal theories. Rothwell Cotton Co. v. Rosenthal & Co., 827 F.2d 246, 251 (7th Cir.1987), citing Keene, 561 F.Supp. at 665-66.

Analysis

A. The Doctrine of Equivalents and the Festo Decision

Karsten argues that the Federal Circuit's decision in Festo materially changed the law governing and application of the doctrine of equivalents and therefore this court's September 7, 2000, decision must be reconsidered.

In the present case both parties agree that in light of Festo the doctrine of equivalents infringement is precluded for '021 Patent Claims 7-8 and 14-15. This court's accepts/agrees that the Festo decision has materially changed the law governing the doctrine of equivalents and acts to preclude doctrine of equivalents infringement for '021 Patent Claims 7-8 and 14-15.¹

B. The Validity Issue

In addition, Karsten moves this court to reconsider its September 7, 2000, ruling on invalidity, arguing that evidence before this court allows this court to grant summary judgement in Karsten's favor. This court disagrees.

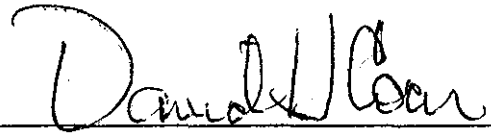
This court has repeatedly held that "motions for reconsideration served a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." In this case, Karsten has not provided any evidence demonstrating that the "measurements" of the golf clubs is newly discovered. Consequently, this court cannot see any reason to reconsider its September 7, 2000 ruling as to Vardon's remaining claims of literal infringement.

¹ Vardon's literal infringement claims as to Claims 14 and 15 remain.

Conclusion

For the foregoing reasons, Karsten's motion for reconsideration of this court's September 7, 2001 summary judgement determination with respect to U.S. Patent 5,401,021 is granted in part and denied in part.

Enter:

A handwritten signature in black ink, appearing to read "David H. Coar", written over a horizontal line.

David H. Coar
United States District Judge

Dated: March 12, 2002